

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0124P**

**Withholding Tax  
Calendar Year 1998**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a general contractor based out of state and works throughout the United States. Taxpayer employs specialty subcontractors and files income tax returns in Indiana. Upon audit, it was discovered that the taxpayer entered into a contract with a North Carolina firm to build a building in Jeffersonville, Indiana that was completed in 1998. Taxpayer was a general contractor for the project. During construction, taxpayer sub-contracted much of the specialized work to both local and nonresident contractors. Taxpayer did not withhold income tax from any disbursements made to subcontractors. Audit included only companies that were not registered to do business in Indiana.

Taxpayer protests the penalty assessed on an audit completed on June 11, 1999.

1. **Tax Administration** – Penalty

### **DISCUSSION**

Taxpayer requests the department waive its negligence penalty because it enters into numerous subcontracts related to each contract it performs. To confirm and promote tax compliance by its subcontractors, taxpayer includes a clause in each subcontract that holds the subcontractor responsible for all tax requirements related to its contract with Taxpayer. Taxpayer states it relied on the contract. Taxpayer further states it has now implemented procedures to withhold Indiana Gross Receipts Tax from subcontractors that do not provide a current Indiana Certificate of Authority and respectfully requests a waiver of the proposed penalty.

Taxpayer's audit revealed that it was the primary lump sum contractor for a construction project in Indiana. The taxpayer failed to withhold tax from out of state contractors that were not registered with the department as required by statute and has not provided reasonable cause for failing to do so.

### **FINDING**

Taxpayer's protest is denied.